



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

September 24, 2010

Washington Fruit & Produce
c/o Cliff Plath
PO Box 1588
Yakima WA 98907-1588

RE: Water Right Change Application Nos. **CG4-26018C@6 (BENT-09-05)** and
CG4-26464C@2 (BENT-09-04)

In accordance with RCW 90.80.080 the Department of Ecology (Ecology) has reviewed the Record of Decision (ROD), Report of Examination (ROE), and all comments, protests, objections and other relevant information submitted by the Benton County Water Conservancy Board (the Board) for the above referenced application for change.

Ecology has modified the decision of the Board and the proposed change/transfer of water right is approved under the following conditions:

Summary of Ecology's Final Order

MAXIMUM CUB FT/ SECOND		MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR		TYPE OF USE, PERIOD OF USE	
		4400 gpm (combined use) CG-26464@2 CG4-26018C@6	1820 (combined use) CG-26464@2 CG4-26018C@6		455 acres for Irrigation, year around use.	
SOURCE					TRIBUTARY OF (IF SURFACE WATER)	
Groundwater from seven wells; all seven wells are authorized withdrawal points for CG-26464@2 and CG4-26018C@6. Columbia River-John Day Pool.						
¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
1) SW	SE	10	5	27 EWM	31	Benton
2) SE	SE	10	5	27		
3) SW	SW	11	5	27		
4) NE	SW	11	5	27		
5) NE	SW	11	5	27		
6) NE	SW	11	5	27		
7) NE	SW	11	5	27		
Surface water POD						
NW	NW	15	5	27		

INFO ONLY

POINT LOCATION FOR WELLS 4-7					
Well #4 – 833 feet East and 1185 feet North from SW Corner of Section 11, T. 5 N., R. 27 E.W.M.					
Well #5 – 968 feet East and 1206 feet North from SW Corner of Section 11, T. 5 N., R. 27 E.W.M					
Well #6 – 1090 feet East and 1238 feet North from SW Corner of Section 11, T. 5 N., R. 27 E.W.M					
Well #7 – 1195 feet East and 1276 feet North from SW Corner of Section 11, T. 5 N., R. 27 E.W.M					
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD					
See the legal description as described in the decision table contained within the Benton County Water Conservancy Board December 2003 report of examination (ROE).					
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE,
DEVELOPMENT SCHEDULE					
BEGIN PROJECT BY THIS DATE:		COMPLETE PROJECT BY THIS DATE:		WATER TO PUT TO FULL USE BY THIS DATE:	
Immediately		By January 1, 2010		By January 1, 2011	

Ecology has **MODIFIED** the decision of the Board as follows:

- 1) The Water Board's decision has been modified as noted in the table above.
- 2) All provisions from previous Board decisions, Ecology orders, and water right certificates remain in effect.
- 3) The following language is added to the Water Board's decision and ROE:

The applicant has requested that a surface water diversion be added as a point of withdrawal to his groundwater right(s). The subject wells are located adjacent to the Columbia River and are completed at depths of about 30 to 40 feet below land surface. The completion depths of the wells are above the uppermost flow of the Columbia River Basalts. During drilling the wells encountered very coarse ice age flood deposits such as boulders, cobbles, sand, and gravel. Prior to the construction of John Day Dam groundwater did not exist in the sediments the wells are completed into. After dam completion the elevated river stage caused river water to move into the sediments resulting in an artificial condition of where river water is now stored in the formerly dry sediments. Based on analytical groundwater modeling it is concluded that the wells withdraw exclusively river water after one to two weeks of the start of pumping. Therefore, for the most part, the wells have historically served as a means of withdrawing surface water.

Policy 2010 "Defining and Delineation of Water Sources" directs Ecology to consider the management of source water when evaluating change requests from ground to surface water. In this case, instream flows have been adopted on the Columbia River by the department in WAC 173-563. There are approximately 380 water right holders junior to the adopted flows that must curtail use during droughts (about 1:20 years). During drought years, water users are managed on a weekly basis in response to a forecast of future water availability by the Columbia River Operational Hydromet and Management System (CROHMS). The forecast includes major dam operations, but not individual irrigation diversions. Based on the modeling, the use of a surface water diversion would

result in additional impacts to the river for only one to two weeks relative to the historical operation of the wells. Given this, neither instream flows nor the interruptible water users are expected to be impaired as a result of this transfer.

YOUR RIGHT TO APPEAL

You have a right to appeal this decision to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this decision. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do the following within 30 days of the date of receipt of this decision:

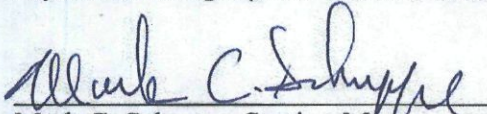
- File your appeal and a copy of this decision with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this decision on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW, Ste 301 Tumwater WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia WA 98504-0903

For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website: <http://www.leg.wa.gov/CodeReviser>

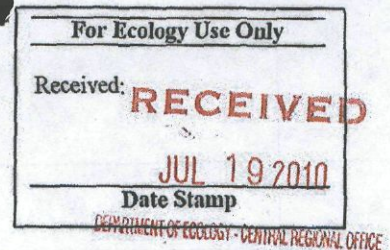

Mark C. Schuppe, Section Manager
Water Resources Program

MCS:JK:gg/100911

Enclosures: Your Right To Be Heard
Construction Notice
Water Measuring Requirements & Form 1

Certified Mail: 7007 2560 0001 9535 1775

cc: Janet Rajala, Department of Ecology, ERO (email/pdf)
Dr. Darryll Olsen, Benton County Water Conservancy Board
Philip Rigdon, Director, Natural Resources Division, Yakama Nation



Benton County
WATER CONSERVANCY BOARD

BENT-09-05

Record of Decision

ROE and ROD Reviewed and Approved by BCWCB Members

Applicant: Cliff Plath, Washington Fruit & Produce Application Number: C\$4-26018C@6

The attached Report of Examination has been reviewed by the BCWCB members; and this Record of Decision was made at an open public meeting of the Benton County Water Conservancy Board held on July 15, 2010, with any changes to ROE/ROD based on information received from the applicant and WADOE staff.

(X) Approval:

The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

() Denial:

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

Signed [Signature] Date: 7/15/2010
Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Signed [Signature] Date: 7/15/2010
John Jaksch, Ph.D., Vice Chairman
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Signed _____ Date: 7/15/2010
Matt Berg, Treasurer
Benton County Water Conservancy Board

Approves
Denies
Recused
Abstains
Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 7/20/2010.

INFO ONLY

BENTON COUNTY WATER CONSERVANCY BOARD

RECEIVED

JUL 19 2010

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Application/Review for Change/Transfer

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF
THE STATE OF WASHINGTON

Report of Examination

Prepared by Members of the Benton County Water Conservancy Board



Surface Water

Ground Water

DATE APPLICATION RECEIVED (December 2009 Public Notice as revised)	WATER RIGHT DOCUMENT NUMBER CG4-26464C@2 CG4-26018C@6	WATER RIGHT PRIORITY DATE November 8, 1979 October 10, 1978	BOARD-ASSIGNED CHANGE APPLICATION NUMBER BENT-09-04 BENT-09-05
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NAME
Mr. Cliff Plath, Washington Fruit & Produce

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
P.O. Box 1588	Yakima	WA	98907

Changes Proposed: ☐ Change purpose ☐ Add purpose ☐ Add irrigated acres ☐ Change point of diversion/withdrawal
☐ Other (Temporary, Trust, Interties, etc.) ☒ Add Point of Diversion.

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt (water right) ☐ Not exempt (proposed project)

The direct water right change/transfer described herein is exempt from SEPA review, as the water amount involved is under the SEPA threshold criteria.

BACKGROUND AND DECISION SUMMARY

Existing Right

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 4,400 gpm (Combined Use) CG4-26464C@2 CG4-26018C@6	MAXIMUM ACRE-FT/YR 1,820 (Combined Use) CG4-26464C@2 CG4-26018C@6	TYPE OF USE, PERIOD OF USE 455 Acres Year-Round Use CG4-26464C@2 CG4-26018C@6
SOURCE Groundwater in Direct Hydraulic Connection for Management Purposes to the Mainstem Columbia River, John Day Pool	TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool		

AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Diversion Point:	SW	SE	10	5N	27 EWM		Benton
	SE	SE	10	5N	27 EWM		
	SW	SW	11	5N	27 EWM		
	NE	SW	11	5N	27 EWM		

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

Sections 10 and 11, T.5N, R.27 EWM.

Proposed Use

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 4,400 gpm (Combined Use) CG4-26464C@2 CG4-26018C@6	MAXIMUM ACRE-FT/YR 1,820 (Combined Use) CG4-26464C@2 CG4-26018C@6	TYPE OF USE, PERIOD OF USE 455 Acres Year-Round Use CG4-26464C@2 CG4-26018C@6				
SOURCE Groundwater in Direct Hydraulic Connection for Management Purposes to the Mainstem Columbia River, John Day Pool			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Wells:	SW	SE	10	5N	27 EWM		Benton
(and as described on permit)	SE	SE	10	5N	27 EWM		
	SW	SW	11	5N	27 EWM		
	NE	SW	11	5N	27 EWM		
And All Within: Surface Water	NW	NW	15	5N	27 EWM		

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED

All within:

Sections 10 and 11, T.5N, R.27 EWM.

Water Board Decision

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE 4,400 gpm (Combined Use) CG4-26464C@2 CG4-26018C@6	MAXIMUM ACRE-FT/YR 1,820 (Combined Use) CG4-26464C@2 CG4-26018C@6	TYPE OF USE, PERIOD OF USE 455 Acres Year-Round Use CG4-26464C@2 CG4-26018C@6				
SOURCE Groundwater in Direct Hydraulic Connection for Management Purposes to the Mainstem Columbia River, John Day Pool			TRIBUTARY OF (IF SURFACE WATER) Mainstem Columbia River, John Day Pool				
AT A POINT LOCATED: PARCEL NO. Wells: (and as described on permit)	¼ SW SE SW NE	¼ SE SE SW SW	SECTION 10 10 11 11	TOWNSHIP N. 5N 5N 5N 5N	RANGE 27 EWM 27 EWM 27 EWM 27 EWM	WRIA	COUNTY. Benton
And All Within: Surface Water	NW	NW	15	5N	27 EWM		
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED All within: Sections 10 and 11, T.5N, R.27 EWM.							

DESCRIPTION OF PROPOSED WORKS

The existing certificate(s) are being used for irrigation of lands along the John Day Pool, Columbia River (Horse Heaven Hills). The water right is in good standing per the WADOE file records.

The applicant seeks to increase the flexibility of the water right by adding a point of diversion, that had previously been attached to the water right under separate change/transfer decisions. The water delivery will utilize an existing pump station, mainline, and water distribution system.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: Immediately	COMPLETE PROJECT BY THIS DATE: By January 1, 2014	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: By January 1, 2015
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NOTE: The Water Board establishes the development schedule, as required under RCW 90.80.070, 90.80.080, and WAC 173-153-130. The schedule may be extended by WADOE if diligence is demonstrated in the completion of this project.

REPORT OF EXAMINATION

Prepared by Members of the Benton County Water Conservancy Board

BACKGROUND

A change/transfer application for certificate CG4-26464C@2 and CG4-26018C@6 was received and accepted by the Water Board in December 2009, with further information provided in January-March 2010, and a field tour conducted in April 2009.

The applicant requests adding a point of diversion (surface water) to the water right. This point of diversion had previously been added to the water rights, and then removed given subsequent water right change/transfer actions (see attachments). The applicant seeks greater flexibility in the use of the water right, and the change would be consistent with allowed use and changes under RCW 90.03.380.

The applicant's existing points of diversion are wells in direct hydraulic continuity with the Columbia River (John Day Pool).

The existing water right is in good standing.

Attributes of the water right as currently documented:

Name on certificate, claim, permit: Shore Properties (Cliff Plath, Washington Fruit and Produce)

Water right document number: CG4-26464C@1, CG4-26018C@4

As modified by permit change number: CG4-26464C@2, CG4-26018C@6

Priority date, first use: November 8, 1979 and October 10, 1978

Water quantities: Qi: 4,400 gpm Qa: 1,820 acre-ft./year

Source: Surface Water, Columbia River Mainstem, John Day Pool

Point of diversion/withdrawal: See above and attachments

Purpose of use: Irrigation of 455 acres

Period of use: Year-Round Irrigation Use

Place of use: See above and attachments

Existing provisions: See attached water right assignment form

Tentative determination of the water right:

See Water Board's Decision Above.

History of water use:

The certificate has been used in conjunction with another water right to serve irrigation lands along the Columbia River.

Previous changes:

The water rights have been subject to previous changes (see attachments).

SEPA:

As noted above, the water right change request is exempt.

COMMENT AND PROTESTS

Public notification for the applicant's request was filed in the Tri-City Herald. A copy is provided in the Public Notice attachments. The WADOE/Water Board did not receive a protest notice, or comments, from a third party.

The application has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

Issues Raised by WADOE:

The Water Board has provided the WADOE CRO with the change/transfer application and public notice, and a Water Board representative has discussed in detail the change request with WADOE staff, and requested an explicit identification of any issues of concern related to the change request or the Water Board's preparation of the ROE/ROD.

The Water Board has determined, via applicant data records and field inspection, that the said water right is being beneficially used, and operating under the requirements of water code provisions and the issued permit.

Protests:

Date: None Received.

This was recognized by the board as a ☐ Protest ☐ Comment

Name/address of protestor/commenter:

Issue:

Board's analysis:

Other:

INVESTIGATION

Prepared by Members of the Benton County Water Conservancy Board

The following information was obtained from site inspections, technical reports and documents, research of department records, and discussions with the applicant's technical representative/consultant and other interested parties; as well as discussions with the CRO-WADOE staff.

Proposed project plans and specifications:

As noted above, the applicant will continue to use this water right with an added point of diversion, with no change to place of use, with no change to the authorized water volumes, and with no change to allowed irrigated acres. The water right will include the use of one surface water pump station, already in existence, along with the existing wells.

A. Key Technical Issues—Water Right Review:

This investigation has included several issues:

Tentative Determination:

In order to make a water right change decision, the Water Board must make a tentative determination on the extent and validity of the right. The Water Board has made the tentative determination as displayed upon the first section of this report. There are several circumstances that can cause the Board's tentative determination to differ from the stated extent of the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings.

First, the water right applicant holds a valid water right certificate in good standing, and it is on file with the WADOE. The water right is subject to the surface water code provisions, including RCW 90.03.380 for change/transfer provisions.

The certificate is valid as stands, subject to subsequent change actions by the Water Board and any WADOE administrative changes affecting development.

Second, the change/transfer request must be consistent with RCW 90.03.380, and related water code statutes. A review of the current irrigated acreage, and the crop types, suggests that there has been no change to the allowed water use, per previous investigations made on this property (and subject to the 2005-2009 period). Water is being used consistently per previous change/transfer reviews.

Third, under the change request, the total amount of water withdrawal from the existing right and proposed change cannot exceed the amount within the currently allowed water right. The change/transfer request must not exceed the existing water right limits; no enlargement of the water right is allowed.

Fourth, the Water Board has requested data on the field acreages for the certificate and has verified that the change/transfer is based on the said acres (GPS farm data, maps and field visit). The applicants technical records indicate that the full amount of the allotted acres have been consistently irrigated to produce hay and apple/cherry crops. More hay ground has been converted to tree fruit.

And fifth, based on the above information and analyses, the Water Board has determined that the full amount of the said water right for change/transfer is presented within the above "Board Decision" summary, and should be the amount not exceeded by the applicant within the proof of appropriation filing and within the superseding permit issued by WADOE.

Hydrologic, and other technical investigations:

First, based on detailed technical review/discussions with CRO-WADOE staff (previous changes from same point of diversion), it is concluded that the requested change/transfer will divert water from the same body of water (management area) as that allowed under the existing water right. The existing pump station will be added, located within the mainstem of the Columbia River, John Day Pool.

Second, the change request cannot create impairment. The Water Board has reviewed with the applicant information on potential impairment, along with the WADOE point of diversion and water right records (Columbia River Water Management Program mapping system), and concludes that impairment is not an issue for this change request. The point of diversion is consistent with the impairment standards under RCW 90.03.380, as a perfected water right.

As a junior Columbia River Water Rights, the rights are subject to the minimum instream flows in Chapter 173-563 WAC, as specified by Ecology letter dated March 5, 2004, and attachment to this ROE/ROD. This provision prevents impairment to other water rights.

Further, it is noted that:

- 1) For this immediate area, no record/affirmation of impairment has been noted by the Water Board or WADOE.
- 2) The Water Board has required the applicant to review impairment issues for the applicant's change request. This review indicates that the change action will not impair other water rights.
- 3) Based on the public notice of this change request, the Water Board has received no impairment issue comments from other existing water right holders, including those who divert water from sites within the John Day Pool.

Given the above review, the Water Board concludes that the proposed action will not create impairment to other water rights per the provisions and conditions established under the existing permit and the conditions provided within this ROE/ROD.

And third, relative to the change request, the Water Board has previously evaluated extensive technical data and analyses related to any potential flow impacts affecting environmental resources, and determined that no empirically measurable, negative impacts will occur to environmental resources. This includes river hydrologic data, NOAA Fisheries flow-survival and river system survival data/analyses, University of Washington river system survival data, and data/analyses referenced by WADOE-sponsored studies.

B. Water Right Adjudication Process:

Water right adjudication does not affect this application.

C. Verification of Existing Water Right:

As noted above, the existing water use retains a certificate of water right granted by the Washington State Dept. of Ecology (and with previous changes). The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the existing water use and land operations, and has conducted its own review of the water right relative to change/transfer conditions as discussed above. It is concluded that the water right is in good standing, and subject to the conditions contained within this ROE/ROD for change/transfer.

D. Field Examination:

The field examination was conducted by Dr. Darryll Olsen, Chairman, BCWCB, with an on-site visit during the month of April 2010. Further, the Water Board is familiar with this area having recently reviewed other related applications and has previously toured the area with the applicant.

The field examination confirmed the information within the application request and technical information, which is more fully elaborated upon in this Report of Examination.

The field examination consisted of viewing the existing/proposed water use sites, existing pumping site, and the surrounding area. A visual examination of the site water use area was conducted, along with a review of the applicant's maps. In essence, the field investigations confirmed information provided by the applicant through personal communications and supporting application materials.

E. Technical Information, Investigations, or Reports Reviewed:

The Water Board has reviewed the applicant's WADOE file and records contained therein, including any reports/comments submitted by WADOE staff, and pertinent WADOE water right records.

The applicant has provided technical information, personal communications, and technical references requested by the Water Board, including data to verify the existing and proposed use areas; and the applicant has communicated extensively with individual Water Board members to answer specific questions about the change/transfer request. The Water Board has conducted a field examination to verify the information contained within the applicant's current water rights and supporting technical information. The Water Board has requested and received supplemental information from the applicant and has discussed future water usage needs with the applicant.

The Water Board has reviewed the standing of the water right, documentation provided by the water right holder concerning land holdings and management, and aerial photography for the existing and proposed water right place of use and purpose.

The Water Board has forwarded copies of the application change/transfer request and public notice to the state Dept. of Fish & Wildlife, the Dept. of Health, the Tribes, and to all parties requesting such copies. No comments were received by these parties during the formal, and informal, public comment period for the change/transfer application.

The Water Board has reviewed the applicant's SEPA compliance needs.

F. Associated Rights and Uses:

The subject certificate is being beneficially used, and it is being used along with several other water rights in the nearby area by the applicant (CG4-31006), as served by the existing Columbia River pump station. Other water rights are not directly affected by the proposed change/transfer.

The Water Board has identified nearby water rights adjacent to the existing and proposed place of use, as indicated within the WRATS database; and identified nearby wells and surface water pump stations, as indicated on the WADOE website and data bases.

G. Review of Potential Impairment:

Because the proposed action will not increase the existing certificated water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible. The applicant's technical information has been reviewed on water use within the same body of water for management purposes and potential impairment.

The proposed change/transfer will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in diversion/withdrawal on an annual basis after the change/transfer, compared to existing permitted/certificated withdrawals; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and development plan.

The Water Board has published public notice of the proposed action and reviewed any potential technical issues concerning impairment.

Existing water rights located within the nearby area--within the same section and adjacent sections--were noted according to information contained within the WADOE WRATS data base system and visual inspection, and ongoing Water Board review within this area.

As noted above based on the applicant's technical information and the Water Board's review, it is concluded that no impairment would occur related to the water right change/transfer request.

The field investigation revealed that the applicant's request for change/transfer is consistent with existing land and water use practices within the immediate area, reflecting the development of and consistency with the Benton County Comprehensive Land Use Plan.

The change/transfer request is consistent with net beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The change will not increase water diversions or net depletions from the surface water source. More specifically, the subject application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, and to provide greater operational control to water managers.

Given the fact that no increase in water withdrawal from the existing surface water management source will occur relative to that permitted and allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided under the existing water right modification order granted by the WADOE. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources—without regulation—or increase existing allowed net annual withdrawals/diversions from that currently permitted, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.

This application decision has no impact on WADOE's existing water right decisions, the condition of local surface water or groundwater resources based on empirical data, or the priority for water rights between junior and senior water right holders within the local area. The Water Board does include conditions within this ROE to ensure that the public interest affecting water use is protected, and that they are consistent with actions that would be pursued by WADOE to avoid future or potential impairment problems or regulation actions.

H. Effect or Benefit to Public Interest:

A recent Washington State Supreme Court ruling has stated that "...a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380." PUD No. 1 of Pend Oreille County v. Dep't of Ecology, 70372-8 (2002). By extension, neither does the Water Board have authority to apply a public interest test when evaluating a change in water right request under RCW 90.03.380.

Nevertheless, the Water Board concludes that the requested change/transfer is not contrary to the public interest governing water use. To the extent review of public interest is applicable, the Water Board finds that the application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

Because the proposed action will not increase the existing allowed annual water use, or increase the water put to actual beneficial use, or result in an impact on other existing water rights or applications for new water rights, it does not negatively change the existing status quo for water use impacts. Thus, no impairment is perceived, because of the change/transfer requested in the application. Water use is provided consistent with statutory requirements for beneficial use.

The proposed action does provide for a continuation of the existing beneficial use as stated within the permit of water right, increasing the economic benefits to the state and local area by allowing for continued use and development of irrigated lands. The development is taking place in the land-use management area of Benton County.

This action is consistent with the intent of RCW 90.03.380, and 90.80 (amended May 10, 2001) and other applicable statutes; and it is consistent with Benton County's Comprehensive Land-Use Plan. No impairment is consistent with the public interest; all pertinent water right issues are addressed above; conditions are recommended within this ROE to further protect the public interest consistent with state water law.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

I. Consideration of Pending Applications:

The applicant's request will not affect the priority for action on pending new water rights or change/transfer applications filed with the Washington State Department of Ecology, for Benton County. Existing applications for Benton County were noted (WADOE data base); and no infringement on priority for action for these applications is perceived by (WADOE or the Water Board).

This application review also is consistent with legislative changes made in 2001 affecting the processing of change/transfer applications by the WADOE, as well as the amendments made to RCW 90.03.380.

Public notice has been provided for requesting all water right holders within the Benton County to submit existing or new water right change/transfer applications to the Benton County Water Board—or the WADOE. Applications received by the WADOE or Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the agency's and Board's jurisdiction. Those that are found wanting are referred back to the applicant for re-submittal or withdrawal. The remaining ones are acted on by a first-come, first-serve basis, taking into account received application's priority date and the technical/legal review requirements thereof.

FINDINGS AND CONCLUSIONS

1. The certificate of water right and beneficial use are verified.
2. The proposed change/transfer will result in no increase in the annual quantity of water authorized and is consistent with the requirements of RCW 90.03.380 and the surface water code. The change/transfer request will not increase the allowed water right; the change/transfer will not increase allowed consumptive use from the designated source, as allowed by the water code.
3. There will be no increase in water withdrawal on an annual or seasonal basis. In addition, continued monitoring of the quantity of water pumped will help ensure that allowed water withdrawals are not exceeded, for the changes requested.
4. The Water Board has determined that impairment is not an issue affecting this change request; the change is within the same body of water for management purposes; and the use is allowed under RCW 90.03.380.
5. Public notice has been provided for the proposed action, and any public concerns have been reviewed by the Water Board. Public notice and application submittal has been forwarded to several state resource agencies/tribes/interested parties for comment; the agencies have provided no direct comments to the application.
6. The Water Board has reviewed the proposed project for SEPA compliance.
7. The proposed action creates no perceived detrimental impacts or impairments to other water right holders or permit applicants; adequate data and information exists to make this determination with confidence.
8. No protests have been made by third parties on this application.

9. The proposed action is consistent with the intent of RCW 90.03.380 and 90.80 (as amended May 10, 2001) and recent case reviews by the Washington State Supreme Court.

10. The proposed action supports the public interest concerned with the direct use of water rights, is consistent with allowed beneficial uses, and is consistent with local area economic development needs and land uses.

11. The Water Board has provided for specific conditions and provisions affecting the use of the water right, as identified below.

RECOMMENDED PROVISIONS

A. Provisions:

The applicant's water right change for an added point of diversion is conditioned by the following provisions:

1. The place of use for the water right is designated in the summary table above (under Water Board Decision).
2. The point of diversion is designated in the summary table above (under Water Board Decision).
3. Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices, and taking into account cost-effectiveness for operations and economic viability.
4. As a junior Columbia River Water Rights, the rights are subject to the minimum instream flows in Chapter 173-563 WAC (see rule attached).
5. The issued superseding certificate for CS4-26464C@2 and CS4-26018C@6 shall not exceed 4,400 pgm combined use, 1,820 acre-ft. annually combined use, for year-round irrigation use, 455 acres.
6. By January 1, 2014, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction is completed, unless further extended for good cause.
7. Proof of appropriation (for actual beneficial use of water) is due to the Water Resources Program, Central Region Office, WADOE by January 1, 2015, unless further extended for good cause.
8. The WADOE shall undertake a proof inspection to certify actual development of the water right amended within this ROE.
9. The applicant has filed for an assignment of the permit that shall be completed jointly with this change/transfer decisions.
10. The applicant will provide the WADOE with measured water use data, for the existing and new place of use, consistent with the provisions of this change decision. The metered or measured data will ensure that water usage will not exceed authorized amounts, as well as that within adjacent water rights used at the existing points of diversion.
11. An approved measuring device(s) shall be installed and maintained for the sources (all points of diversion) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data (Qa and Qi) shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year typically.

12. The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements."

13. At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, weekly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.

14. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

15. Department of Ecology personnel, upon presentation of proper credentials and prior notification, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions, but only to the extent otherwise allowed by law.

16. At the pump diversion sites, the applicant shall install and maintain water intake screens complying with standards prescribed by the Washington State Dept. of Fish and Wildlife.

B. Mitigation Requirements:

None are required.

DECISION

Approvals:

The Benton County Water Conservancy Board hereby APPROVES the water right change/transfer described within this record of examination and record of decision, and submits this certificate for conditional approval to the Director of the Washington State Department of Ecology. If the Director takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final.

Approved Unanimously by the BCWCB
Kennewick, Washington
This 15th day of March 2010

Approved and Signed on Behalf of the Water Board By:

Signed _____

Darryll Olsen, Ph.D., Chairman
Benton County Water Conservancy Board

Date Mailed to WADOE Director: on or before 7/20/2010



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

April 13, 2010

Shore Properties Inc
Attn: Clifford Plath
PO Box 1588
Yakima WA 98907-1588

**Re: Water Right Application No. CG4-26018C@5 – Temporary Authorization
to change of place of use and change of point of diversion**

**THIS AUTHORIZATION SHALL IN NO MANNER BE CONSTRUED TO GUARANTEE OR
IMPLY THAT A PERMANENT WATER RIGHT WILL ISSUE FOR THE WATER USE
HEREIN AUTHORIZED.**

Background

On August 18 2009, Shore Properties, Inc., of Yakima, Washington, filed an application for Temporary Authorization to temporarily change the place of use and change to a point of withdrawal of Ground Water Change Permit No. CG4-26018C from April 1 through October 31, 2010.

Benton County Water Conservancy Board (the Board) issued a Record of Decision (ROD) for Ground Water Certificate No. G4-26018C@4 and, CG4-26464C@1 on December 12, 2003, and modified by the Department of Ecology (Ecology) on March 5, 2004. The ROD, as modified, authorized the applicant to utilize 7 points of withdrawal (wells).

These wells are jointly used to supply water for Change Authorization Nos. CG4-26018C@4, CG4-26464C@1, and Permit No. G4-31006P. The following table show the authorized instantaneous quantities for each of these rights.

Authorization	Instantaneous Quantity
CG4-26018C@4	2200 gallons per minute
CG4-26464C@1	2200 gallons per minute
G4-31006P	7900 gallons per minute

The annual quantities of water issued in the ROD as modified for Change Authorization Nos. CG4-26018C@4 and CG4-26464@1, are a combined 1820 acre-feet for irrigation of 455 acres.

FILE COPY



The applicant has filed the Proof of Appropriation of Water form (PA) for the rights addressed in the ROD on August 13, 2009, and a letter amending the annual quantity on March 4, 2010. The quantities of water listed on the PA and subsequent amendment are 2200 gallons per minute (gpm) and 1820 acre-feet and irrigation of 455 acres. The 1820 acre-feet and 455 acres represent the combined water used between Change Authorization Nos. CG4-26018C and CG4-26464C.

On February 25, 2010, a site visit for this Temporary Authorization Application, in conjunction with a Proof Examination for Change Authorization Nos. CG4-26018C@4, CG4-26464C@1, and Permit No. G4-31006P, was conducted. The quantities of water used for this Temporary Authorization Application will be based on the observations during the Proof Examination.

Proposed Temporary Change

The applicant proposes to divert water from the Columbia River (John Day Pool) at a maximum of 2760 gallons per minute (6.16 cubic feet per second) and 1096 acre feet per year (ac-ft/yr) for irrigation of 269.9 acres. The 269.9 acres in that authorized place of use under Change Authorization No. CG4-26018C@4 will be left fallow for the 2010 irrigation season.

The point of diversion will be located on the Columbia River within the John Day Pool within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 5 N., R. 27 E.W.M., both within Benton County, Parcel No. 115571000000000 commonly known as the Prior pump station.

Place of use is described being within the as E $\frac{1}{2}$, SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 28 and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 all within T. 6 N., R. 27 E.W.M

Public Notice

Public notice of the application was published in the Prosser Record-Bulletin on December 23, and December 30, 2009. No letters of protest or comments were received during the 30-day protest period.

Impairment

The Board issued a ROD for Change Application Nos. CG4-30016P, CG4-26464C, and CG4-26018C, on March 30, 2000, and affirmed by Ecology on May 15, 2000. This ROD determined that the wells used for this change application are in continuity with the Columbia River (John Day Pool). Furthermore, minimum flow provisions for the Columbia River have been placed on Change Authorization No. CG4-26018C@4 (the right preceding the subject change application). This ROD and affirmation are available in the file for Change Application No. CG4-26018C@4.

Therefore, by moving the water to a point of diversion downstream on the Columbia River and staying within the John Day Pool the impacts to other water rights would not be likely.

Columbia River Minimum Flows

WAC 173-561-040 and WAC 173-561-050 establishes the minimum flows for the Columbia River as whenever the March 1st forecast of the April-September runoff at The Dalles Dam is 60 million acre feet (MAF) or less. The March forecast for the April-September 2010 is above the 60 MAF. Therefore, the Columbia River will not be regulated in 2010 to meet the minimum flows.

Conclusions and Decision

The water for this proposed Temporary Authorization for Change has been put to beneficial use and is available for the proposed project and can take place on a temporary basis without impairing existing water rights and is eligible to change.

Provisions

This Temporary Authorization for Change is subject to the following limitations and provisions:

1. The priority date of this water right is October 10, 1978.
2. The point of diversion will be located on the Columbia river within the John Day Pool within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, T. 5 N., R. 27 E.W.M., both within Benton County, Parcel No. 115571000000000 commonly known as the Prior pump station.
3. The place of use is located within the as E $\frac{1}{2}$, SW $\frac{1}{4}$ and SE $\frac{1}{4}$ Section 28 and NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 33 all within T. 6 N., R 27 E.W.M
4. The period of use will be April 13, 2010 through October 31, 2010.
5. This Temporary Authorization will expire October 31, 2010, unless sooner revoked for cause.
6. The diversion shall not exceed 4.9 cubic feet per second (2200 gallons per minute); not to exceed 1096 acre feet per year.
7. The purpose of use is for irrigation of 269.9 acres.
8. The diversion intake shall be tightly screened at all times with wire mesh having openings with dimensions not greater than 0.125 (1/8) inch.
9. The operator of the system under this authorization shall:
 - Be aware of the parameters and provisions and operate accordingly.
 - Have a copy of this Temporary Authorization for Change.
 - Provide said copy of this Temporary Authorization upon request of Department of Ecology staff.
10. Under RCW 90.03.360, measuring is required for all surface water diversions, and all withdrawals of ground water in fish-critical basins. Whenever water is being diverted, volume of water shall be recorded and maintained by the permittee.
11. The intake(s) shall be screened in accordance with Department of Fish and Wildlife screening criteria (pursuant to RCW 77.57.010, RCW 77.57.070, and RCW 77.57.040). Contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091. Attention: Habitat Program, Phone: (360) 902-2534 if you have questions about screening criteria. <http://www.wdfw.wa.gov/reg/regions.htm>

12. The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit No., source name, annual quantity used (acre-feet) and maximum instantaneous rate of diversion (cubic feet per second). Copies of these records shall be submitted to the Department of Ecology by January 31, 2011.
13. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.
14. This Temporary Authorization shall in no way excuse the applicant from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
15. The water source may not be located entirely upon land owned by the applicant. Therefore, the applicant is advised that issuance of a permit by the Department of Ecology for appropriation of the waters in question does not convey a right of access to, or other right to use, land which the applicant does not legally possess.
16. No water right in perpetuity shall result from this temporary authorization.

You have a right to appeal this order. To appeal this you must:

- File your appeal with the Pollution Control Hearing Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board:

Mail appeal to:

Pollution Control Hearings Board
PO Box 40903
Olympia WA 98504-0903

OR

Deliver your appeal in person to:

Pollution Control Hearings Board
4224 - 6th Ave SE Rowe Six, Bldg 2
Lacey WA 98503

2. To serve your appeal on the Department of Ecology:

Mail appeal to:

OR

Deliver your appeal in person to:

Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia WA 98504-7608

Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey WA 98503

3. And send a copy of your appeal packet to:

G. Thomas Tebb, L.E.G.
Department of Ecology
15 W Yakima Ave Ste 200
Yakima WA 98902-3452

*For additional information visit the Environmental Hearings Office Website: <http://www.eho.wa.gov>
To find laws and agency rules visit the Washington State Legislature Website: <http://www1.leg.wa.gov/CodeReviser>*

Sincerely,

Mark C. Schuppe, Section Mgr. by MUST DOWNING

Mark C. Schuppe, Section Manager
Water Resources Program

MCS:EH:gg/100406

Enclosures: Water Measuring Requirements

Certified Mail: 7006 0100 0002 8191 9703

cc: Darryll Olsen, Benton County Water Conservancy Board
Philip Rigdon, Director, Natural Resources Division, Yakama Nation